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Issue Date: 15 August 2007

CASE NO. 2005-LHC-00343

OWCP No.: 18-83701

In the Matter of:

L.V. AS WIDOW OF
J.V. (deceased),
Claimant,

vs.

PACIFIC OPERATIONS OFFSHORE, LLP,
Employer

and

INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA
Carrier.

Order Denying the Claimant's Motion to Withdraw or Amend Admissions, Denying the Respondents' Motion to Strike, and Granting Summary Decision

I. Introduction

The Claimant's husband (the Decedent) died when a forklift he operated at his employer's crude oil flocculation plant rolled over him and crushed him. For some reason he had used it in a way unrelated to his job—to harvest fruit. On June 3, 2004, the Decedent's employer,[1] Pacific Operations Offshore, LLP, submitted a claim on the Claimant's behalf and began paying death benefits pursuant to the California Workers' Compensation Act.[2] On July 22, 2004, the Claimant filed for compensation under the Longshore and Harbor Workers' Compensation Act (LHWCA or Longshore Act), 33 U.S.C.A. §§ 901, *et seq*. (West 2007). On February 7, 2006, the Claimant also filed for compensation under the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C.A. § 1333 (West 2007), an extension to the LHWCA. She

[1] The parties agree that there was an employer-employee relationship, and that the claim was timely noticed.

[2] Employer provided $807.69 per week for 52 weeks after the decedent's death. The parties agree that his average weekly wage when injured was $928.22.

claims entitlement to benefits under either statute on grounds that the Decedent engaged in both maritime and oil production employment at covered locations.[3] The Employer, together with its carrier, the Insurance Company of the State of Pennsylvania, adjusted by AIG Claim Services, Inc. (collectively referred to as the Defendants) controvert these claims for federal benefits on jurisdictional grounds.

Three motions are before me, two discovery disputes and one dispositive motion for summary decision. I deny the Claimant's motion to withdraw or amend and the Defendants' motion to strike, but grant summary decision not only as a result of the Claimant's admissions, but also because the Decedent was not a maritime worker and was not killed in a location that satisfies the OCSLA's situs requirement.

II. Procedural Background

On February 25, 2005, the Defendants served their requests for admissions on the Claimant, which were due by April 1, 2005. Declaration of Michael Thomas in Support of Defendants' Opposition to Claimant's Motion to Withdraw or Amend Deemed Admissions (Dec. Thomas). The Claimant's attorney obtained extensions to respond, first until April 8, then until May 7, 2005. *Id*. The hearing on this case, initially scheduled to proceed on May 16, 2005, was continued to October 17, 2005. Approximately one month before the hearing, the Claimant substituted counsel, whose request for an additional continuance to prepare adequately was granted, and the trial date rescheduled to April 24, 2006. Change in the Claimant's counsel gave rise to two additional continuances, to August 28, and December 11, 2006.

On September 27, 2006, the Defendants moved for summary decision, arguing that the Claimant's failure to respond to their requests for admissions had admitted the matters, thereby disproving coverage under both the LHWCA and the OSCLA. In the alternative, the Defendants insist that there is no dispute of material fact regarding the non-maritime nature of the Decedent's job duties, which disqualifies the Claimant from receiving benefits under the LHWCA, and that the Claimant cannot meet the situs requirements under either statute.

On October 9, 2006, the Claimant moved to withdraw or amend the deemed admissions, on grounds that all of the continuances muddled the deadline for replying, and that it would be manifestly unjust to accept the admissions in light of the Defendants' motion for summary decision. The Defendants opposed the motion to withdraw or amend and later moved to strike the Claimant's reply to their opposition because she had not requested leave to submit a reply brief, that brief was untimely, and it raised new legal arguments and evidence. I requested

[3] The Defendants assert that the Claimant is not claiming injury under the LHWCA except as it may have occurred under the OCSLA. However, the Claimant's former counsel believed that jurisdiction is proper under the LHWCA and her current counsel has not stated otherwise. *See*, the Declaration of Diane Middleton in support of the Claimant's Motion to Withdraw or Amend. The parties argued the merits jurisdiction under both statutes, so I accept that the Claimant seeks benefits under either statute.

further argument on the summary decision motion and consequently removed the case from the December 11, 2006 calendar.[4]

III. Factual Background

The employer is a company whose primary business includes oil exploration and extraction. Declaration of Clement M. Alberts in Support of Motion for Summary Decision (Dec. Alberts). It operates a crude oil flocculation facility, La Conchita, in Ventura, California. *Id*. Crude oil is pumped into the plant via pipeline from two offshore platforms designated Hogan and Houchin, which is processed and stored in tanks temporarily before being transported away from the plant by pipeline. *Id.* The Decedent worked as a roustabout both at La Conchita and on offshore platform Hogan, which is located more than three miles off the coast of California on the outer continental shelf. *Id.* He accessed this platform via crew boat from the Casitas Pass Pier, which stands about three miles from La Conchita. *Id*.

At La Conchita, the Decedent performed maintenance and cleaning duties that included painting, sandblasting, weed-pulling, cleaning drain culverts, and operating a forklift. Declaration of Gordon "Scoop" Boswell in Support of Motion for Summary Decision (Dec. Boswell). His regular job duties on platform Hogan involved picking up trash and emptying wastebaskets, washing the decks and well bay, assisting in repairing wellhead safety equipment, piping projects, painting, and assisting on the pipe deck with crane loads going on or off the platform. *Id*. On rare occasions (no more than 2% of his work time) he used a forklift at La Conchita to move scrap metal, which had been transported by boat from the offshore platforms to a pier, and then by truck from the pier to the onshore plant. Deposition of Chris Magill (Depo. Magill)[5] at 31-33.

At approximately 4:00 PM on June 2, 2004, the Decedent's supervisor, Gordon "Scoop" Boswell, directed him to take a forklift to the rear yard of the La Conchita plant and clean up some debris.[6] Dec. Boswell. About an hour and fifteen minutes later, Mr. Boswell found the Decedent next to a plantain tree roughly ten feet off of one of the service roads within the plant facility. Dec. Alberts. He was lying on his back with a forklift resting on his abdomen and chest. *Id.* He was pronounced dead at 5:27 P.M. Dec. Alberts, Exh 2.

The accident report said it appeared that the Decedent stood on top of the raised tines of the forklift to harvest a hand of fruit hanging from a plantain tree out of reach of a person on the ground. Dec. Alberts, Exh 2. Presumably the forklift was stopped as he did this, but it

[4] By Order dated October 24, 2006, I directed the Claimant to submit further argument on the Defendants' motion for summary decision. On November 21, 2006, I granted the Defendants leave to reply to the Claimant's argument in opposition to summary decision and continued the trial once again.

[5] This deposition is exhibit 14 in support of the Declaration of Timothy K. Sprinkles in Opposition to Motion for Summary Decision.

[6] Although the Claimant disputes where the Decedent worked on June 1 and 2, 2004, she takes no issue with where and how he died.

apparently moved forward for unknown reasons, which caused him to lose his balance, fall in front of the forklift, and sustain fatal injuries when it rolled over him. *Id*.

IV. Analysis

A. The Claimant's Motion to Withdraw or Amend

A party must respond in writing to a request for admissions within thirty days after service of the request, or each matter is deemed admitted. Fed. R. Civ. P. 36(a); 29 C.F.R. § 18.20 (2006). On February 25, 2005, the Respondents served their requests for admissions on the Claimant's prior attorney, Diane Middleton, which were due by April 1, 2005. She requested an extension until April 8, and then again until May 7, 2005, to which the Respondents agreed. Dec. Thomas. On or about September 14, 2005, the Claimant substituted Charles Naylor as counsel, who explained in a letter to Judge Mapes that he needed to conduct "significant research" and "appropriate investigations" in order to properly respond to the discovery requests, which he acknowledged were past due. Exh. 10 to Dec. Thomas. The Claimant also insists that Mr. Naylor met with Defendants' counsel, Mr. Thomas, to tell him that he needed more time to respond to the discovery requests, but there is no evidence that Mr. Thomas agreed to extend the deadline for the requests for admissions, only that he agreed to a continuance. Regardless of the change in counsel and multiple continuances, the Claimant failed to serve her responses to the Defendants' requests for admissions within thirty days after service. The Claimant is deemed to have admitted all of the requests by operation of 29 C.F.R. § 18.20 (2006).

After the Defendants filed their motion for summary judgment, based in part on the Claimant's lapse in responding to the requests for admissions, the Claimant moved to withdraw or amend her deemed admissions, arguing that a late response should be permitted because the Defendants knew she needed more time and discovery was still open. The Claimant particularly emphasizes that she scheduled depositions for September 15, and 19, 2006; she questions the Defendants' intention in moving for summary decision so quickly on the heels of these depositions because, she contends, the Defendants should have known that she would need those depositions transcripts in order to make meaningful opposition to any dispositive motion. The Claimant represents that she still did not have the transcripts from these depositions by October 10, 2006.

Facts admitted when a party fails to respond to a request for admissions may serve as the basis for a dispositive motion. *Asea, Inc. v. Southern Pacific Transportation Co.*, 669 F.2d 1242, 1248 (9th Cir. 1981); *Moosman v. Joseph P. Blitz, Inc.*, 358 F.2d 686 (2nd Cir. 1966). In appropriate circumstances, untimely replies may be permitted where the merits of the action would otherwise be subserved, and the party who obtained the admission cannnot establish that withdrawing or amending them will prejudice its defense on the merits. FED. R. CIV. P. 36(b); *Sonada v. Cabrera*, 255 F.3d 1035 (9th Cir. 2001) (allowing withdrawal for lack of prejudice); *see also, In re: Heritage Bond Litig*., 220 F.R.D. 624, 626 (C.D. Cal. 2004) (deeming matters admitted where responses were filed 12 days late, but explaining that a late response should be permitted only when necessary to relieve a party from default by the use of the admissions to obtain a summary or default judgment).

1. Merits of the Claimant's case subserved

The merits are subserved when deemed admissions "practically eliminate[s] any presentation of the merits of the case." *Hadley v. U.S.*, 45 F.3d 1345, 1348 (9th Cir. 1995). The Claimant insists that it would be manifestly unjust to allow the admissions to stand because they establish that the Decedent's death is not covered by the LHWCA or OSCLA. Most of the admissions are dispositive (all but numbers 1 and 6), but holding the Claimant to them is not necessarily unjust, when she had the opportunity to withdraw or amend those admissions for over a year. At the latest, responses to the Defendants' requests for admissions were due on May 7, 2005. Without the opportunity to withdraw or amend, however, the admissions eliminate the need for presentation of the merits because they preclude coverage under either statute. Consequently, I find that the merits would be subserved if the Claimant is relieved from the admissions. That does not end the inquiry, however.

2. Prejudice to the Defendants

The party that obtained the admission has the opportunity to prove how it would be prejudiced if withdrawal of the admissions were permitted. *Sonada*, 255 F.3d at 1039. Prejudice relates to the difficulty a party may face in proving its case. *Id.*; *see also Hadley*, 45 F.3d at 1349 (finding no prejudice where the moving party would have been able to engage in more extensive trial preparation had the admission been timely). The Defendants assert that the Claimant has failed to respond not only to admissions requests, but also to interrogatories and requests for production of documents. They also argue that some of the Claimant's late answers to the requests for admissions are unreasonable. For example, the Defendants' request number 5 asks the Claimant to admit that the Decedent was not en route to a barge, floating platform, floating island, ship, or other vessel located on the outer continental shelf when he was killed. This is neither vague nor ambiguous, despite the Claimant's objection to the contrary. The parties' lists of undisputed facts both explain that the Decedent was killed by a forklift while attempting to harvest plantains while working on shore. Defendants' Statement of Undisputed Facts (DF) 29; Claimant's Statement of Undisputed Facts (CF) 34. They also agree that workers accessed the offshore platforms from a pier three miles distant from the La Conchita plant. DF 27; CF 20. It makes no sense that the Decedent would have driven the forklift three miles en route to this pier. Therefore, I agree that the Claimant had enough information to admit or deny this request.[7] This evasive response is prejudicial to the Defendants because it is more difficult to defend against claims when the Claimant keeps the factual basis for them to herself. It also runs counter to the purpose of admissions, which is to narrow the issues for trial. *See Asea*, 669 F.2d at 1248.

The Defendants believe they would prevail on summary judgment even without the deemed admissions. This implies that they will suffer little prejudice if the Claimant were allowed to withdraw and amend her responses. Yet the Defendants' belief in their success does not discount a prejudicial impact on their ability to defend against this claim. When the Defendants filed their motion for summary decision, the Claimant had not responded to any of their discovery requests. She had over a year to answer the requests for admissions, but aside

[7] The Claimant eventually admitted this request, but she did so in an amended response filed after the Defendant submitted its opposition to her motion to amend or withdraw.

from her response to the Defendants' request number. 6, I still cannot tell what her answers are. The Claimant submitted her objections and answers to the Defendants' requests for admissions as an exhibit to her motion to withdraw or amend, but those answers themselves do not match those listed in the text of the motion.[8] She submitted a third, amended set of responses as part of her reply to the Defendants' opposition to her motion to amend or withdraw.[9] I decline to accept this final set as the Claimant's intended responses because no leave had been granted to withdraw or amend the first (and second) set of responses. The Defendants certainly face increased difficulty in preparing their defense when the Claimant has offered three different answers to one round of requests for admissions, without answering the rest of the Defendants' discovery requests.

The Claimant asserts that the Defendants are not prejudiced by the late responses because they were aware of the factual issues and had complete access to all discoverable evidence. She claims they knew the Decedent worked 98% of his time on the platforms, that his duties included unloading and loading supplies and things off and onto the crew boat he and others used to access Platform Hogan, and that there was no record of his precise duties or locations on the day he died. Therefore, they would have known that the Claimant would deny at least some of the requests for admissions. Regardless of what the Defendants knew of the Decedent's daily activities, litigation remains an adversary system. It is inappropriate to expect the Defendants to concede a denial to any of their own requests for admissions by anticipating the Claimant's response. Were that so, admission requests would lose much of their value. It is the Claimant's duty to answer the requests, not the Defendants' responsibility to anticipate (or guess about) the answers.

Although it would be unreasonable to hold the Claimant's new counsel to answer for all of the Defendants' discovery requests shortly after accepting the case, that was not required of him. The Claimant waited to seek relief from the deemed admissions until after the Defendants had submitted their summary judgment motion. It does not matter that discovery was still ongoing or that there had been multiple continuances.

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[8] To request for admissions number 1: "The Decedent has no other dependent under the Act than the Claimant," the Claimant answered, "admit," and "admit in part, deny in part. Number 2: "The Decedent was never present on Platform Hogan on the date of death," she answered "unable to admit or deny," and "deny." Number. 3: "The Decedent did not do any work on any barges, floating platforms, floating islands, ships, or other type of vessel located on the outer continental shelf on the date of death," she answered, "unable to admit or deny," and "deny." Number. 4: "The Decedent was never present on any barges, floating platforms, floating islands, ships, or other type of vessel located on the outer continental shelf on the date of death," she answered, "unable to admit or deny," and "deny." Number. 5: "The Decedent was not en route to a barge, floating platform, floating island, ship, or other vessel located on the outer continental shelf when he was killed," she answered: "unable to admit or deny," and "deny." Number. 6: "The Decedent was not scheduled to be on Platform Hogan or any other Outer Continental Shelf Lands Act covered site on the date of death," she answered, "deny," and "deny." Number. 7: "The Decedent was not scheduled to be on Platform Hogan or any other Outer Continental Shelf Lands Act covered site on the date of death," she answered, "deny," and "admit in party, deny in part." Number. 8: "The Decedent is not claiming injury under §901 *et. seq*. of the Act except as it may have occurred under 43. U.S.C. § 1333(b) of the Outer Continental Shelf Lands Act," she answered, "unable to admit or deny," and "deny."

[9] Although the federal rules require that a party supplement its discovery responses as different information becomes available, the Claimant's responses contained in her reply brief seek to replace, rather than supplement the deemed admissions. *See* Fed. R. Civ. P. 26(e). Therefore, they are not accepted as supplemental answers.

Allowing the deemed admissions to stand is somewhat harsh, but in this case it is appropriate in light of the Claimant's failure to withdraw them as soon as she discovered that they were late. *See U.S. v. Kasuboski*, 834 F.2d 1345, 1350 (7th Cir. 1987) (explaining that the harshness of maintaining deemed admissions is tempered by the availability of the motion to withdraw, a procedure that the admitting party had failed to employ). Moreover, this result does not disturb the Claimant's entitlement to a remedy under state law; the Defendants paid workers' compensation benefits at $807.69 per week for 52 weeks after the Decedent's death. Declaration of Michael Thomas in Support of Summary Decision (Dec. Thomas 2) Exh. 11. Therefore, I find that the Claimant's confusing, evasive, and late answers have prejudiced the Defendants' ability to defend against this claim, and deny the Claimant's motion to withdraw and amend.

B. Defendants' Motion to Strike the Claimant's Reply Brief.

No reply to an answer, response to a reply, or any further responsive document, shall be filed unless the presiding judge permits it. 29 C.F.R. § 18.6(b) (2006). The Claimant did not request leave to file a reply. The Defendants argue that this procedural misstep means I should not consider the reply brief. They also argue that it should not be considered because the Claimant filed it 41 days after they served their opposition[10] and because it introduces new factual and legal issues, which cannot be done in a reply. *See Lujan v. National Wildlife Federation*, 497 U.S. 871, 894-95 (1990) (explaining that it is improper to introduce new facts or different legal arguments in a reply brief).

A court must give the opposing party the opportunity to respond to a reply brief if it relies upon new material in the brief. *Beaird v. Seagate Tech. Inc.*, 145 F.3d 1159, 1164-65 (10th Cir. 1998). The Claimant made the following four new arguments in her reply that do not appear in her initial request to withdraw or amend: 1) the responses are timely; 2) she never refused to respond; 3) she was granted an extension to respond to the requests for admissions by virtue of her multiple requests to continue the trial; and 4) she was compelled to prematurely respond to the requests for admissions because she had not received some of the Decedent's timesheets or transcripts from depositions that were taken in September of 2006. The Claimant raised these arguments because the Defendants asserted in opposition that her answers were untimely and failed to explain why she had not responded earlier.

Denying the Claimant the opportunity to counter the Defendants' opposition brief, especially in light of the pending summary decision motion, would interfere with the Claimant's right to address important defense arguments. *See El Pollo Loco, Inc. v. Hashim*, 316 F.3d 1032, 1040 (9th Cir. 2003) (finding that the district court did not abuse its discretion when it entertained an argument raised for the first time in the reply brief). Therefore, the Claimant's peccadillo of failing to request leave before submitting a reply is excused.

The Defendants addressed the Claimant's fourth argument in their motion to strike, explaining that 591 days had passed between the service of the requests for admissions and the Claimant's motion to withdraw or amend. Even with two extensions to respond granted to the

[10] Generally, responses to motions and replies are due within ten days after the initial motion or opposition was served. 29 C.F.R. § 18.6(b) (2006).

Claimant's prior attorney, these admissions were late as of May 8, 2005. A party rarely has access to all discovery before it answers requests for admissions. That is precisely why the federal rules provide an option to respond "unable to admit or deny," while they also impose a duty to supplement discovery responses. *See* Fed. R. Civ. P. 26(e), 36(a)(4). The Claimant attempted to answer the requests for admissions much too late. Therefore, I agree with the Defendants that the Claimant was not compelled to respond prematurely.

None of the Claimant's other arguments alter the fact that her responses to the requests for admissions were well over a year late. Neither the change in counsel nor the requests for continuance has any affect on the timeliness of the responses. None of the exhibits attached to the Claimant's reply brief show that the parties agreed to restart the clock on the requests for admissions. They show only that the Claimant's new counsel was aware that he would need more time to complete discovery and prepare for the hearing. There was no motion to withdraw until October 9, 2006, nearly one month after the Claimant's new counsel acknowledged that responses to discovery were late. The Claimant has not argued that she qualifies for equitable tolling. That she never "refused" to respond does not count as a timely response, and there is no evidence that an extension to respond to the requests for admissions, except for the first two extending the deadline to May 7, 2005, was requested. Indeed, it would have done no good to request one after this deadline had passed, when the remedy for late responses is to request to withdraw or amend the admissions made by operation of law. Therefore, I deny the Defendants' motion to strike, but allow the deemed admissions to stand because the arguments in the Claimant's reply brief do not persuade me to alter that result.

C. Legal Standard for Granting Summary Judgment

A summary decision may be entered if the pleadings, affidavits, and other evidence show that there is no genuine issue of material fact and the moving party is entitled to prevail as a matter of law. 29 C.F.R. § 18.40(d); *Friday v. Northwest Airlines, Inc.*, 2005 WL 1827745 *2, ARB no. 03-132, ALJ No. 2003 AIR 19 (July 29, 2005) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986)). The rule on summary decisions mirrors Rule 56 of the Federal Rules of Civil Procedure. *Mehen v. Delta Air Lines*, Case No. 03-070 (ARB Feb. 24, 2005).

The proof must be grounded in affidavits, declarations, and answers to discovery from the complainant and (or) other witnesses. 29 C.F.R. § 18.40(d) (2006). Affidavits must be made on personal knowledge, setting forth facts that would be admissible in evidence and show affirmatively that the witness is competent to testify to the matters stated. 29 C.F.R. § 18.40(c) and Fed. R. Civ. P. 56(e). The judge weighs none of this evidence, and indulges reasonable inferences in the claimant's favor. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

The burden first is on the moving party to explain why there is no genuine issue of material fact for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *see also Matsushita*, 475 U.S. at 587 (finding no genuine issue for trial when the record as a whole could not lead a trier of fact to find for the non-moving party). Once this burden has been met, the "adverse party must set forth specific facts showing that there is a genuine issue for trial." *Anderson*, 477 U.S. at 250. The non-moving party cannot rest upon "mere allegations, speculation, or denials of the moving party's pleadings, but must set forth specific facts on each issue upon which he would

bear the ultimate burden of proof." *Id*. at 256. If the non-moving party fails to establish an element essential to his case, there can be "no genuine issue as to any material fact since a complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial." *Celotex*, 477 U.S. at 322-23.

The Defendants argue that the Claimant's admissions establish that the Decedent is not covered by either the LHWCA or the OCSLA because he was not a maritime employee and was not working on an outer continental shelf when he died. Moreover, they insist that even if the Claimant had denied the requests for admissions, she cannot show by sufficient evidence that the Decedent's death is covered by either statute. The Claimant counters that the Decedent loaded and unloaded supplies onto a crew boat, which should qualify as maritime work. She contends that he spent a majority of his time on platform Hogan, and therefore his death on an onshore location that served the offshore oil drilling business should be covered under the OCSLA. She also attacks the Defendants' motion as procedurally defective, but I find this last argument unpersuasive.

Although the deemed admissions are enough to find in the Defendants' favor, in the alternative it is undisputed that the Defendants conducted an offshore drilling business. Offshore drilling and any task essential to it is not maritime employment for purposes of the LHWCA. *Herb's Welding, Inc., v. Gray*, 470 U.S. 414, 422 (1985). Therefore, unloading and loading a supply boat intended to support the offshore drilling business does not qualify as maritime employment. Likewise, the undisputed location of the Decedent's death does not satisfy the narrow situs requirement of the OCSLA. Consequently, the Claimant cannot establish coverage, an essential element to her case. There is no genuine issue of material fact that could overcome the Defendants' motion for summary decision.

1. Technical Defects of Motion

The Claimant argues that the summary decision motion fails to comply with 29 C.F.R. §18.6(a) and (b), which require that applications for an order must be made by motion and all parties must have a reasonable opportunity to state an objection, and that an answer in opposition to a motion is due within 10 days after the motion is served. The Claimant's counsel argues that he could not prepare a meaningful answer to the Defendants' summary decision motion before deposition transcripts became available. Whether the Claimant had all of the evidence sought in her possession has nothing to do with these requirements. Moreover, these depositions were conducted by the Claimant's counsel. If he had wanted expedited transcripts then he could have asked for them, and if he needed an extension to respond to this motion for summary decision then he could have made this request before the answer was due. The Defendants filed a motion for summary decision, to which the Claimant had a reasonable opportunity to answer. Therefore, the Defendants satisfied the regulations.

The Claimant also alleges that the motion is deficient under 29 C.F.R. §18.7(a), (b)(2), and (b)(7). Section 7(a) and b(2) state that an administrative law judge may order a party to file a pre-hearing statement, which includes stipulated facts and a statement that the parties have conferred in attempt to reach stipulation. This places no restrictions on when a motion for summary decision may be filed, so the Defendants' motion is not deficient on that basis. Section

7(b)(7) requires that the parties give suggested hearing times and locations for the presentation of their cases. Again, this is inapplicable to a motion for summary decision, for which no hearing is required. *See* 29 C.F.R. § 18.6(c) (No oral argument will be heard on motions unless the administrative law judge otherwise directs.) Therefore, I find that the motion for summary decision is proper.

2. Deemed Admissions form a proper basis for summary decision

Any matter admitted is conclusively established unless the court permits withdrawal or amendment. Fed. R. Civ. P. 36(b); 29 C.F.R. § 18.20(e). Admissions made under Rule 36, even default admissions, can serve as the factual predicate for summary judgment. *Kasuboski*, 834 F.2d at 1350; *see also In re Carney*, 258 F.3d 415, 421 (5th Cir. 2001) (explaining that failure to timely respond to requests for admission can prevent a party from contesting the merits of the case); *Kathryn Cook v. Allstate Ins. Co.*, 337 F.Supp.2d 1206 (C.D. CA 2004). Here, the Defendants moved for summary judgment prior to the Claimant's motion to withdraw or amend the deemed admissions. Where there has been no previous motion to withdraw or amend deemed admissions, a party may not oppose summary judgment by revisiting issues determined by the deemed admissions. *Tillamook Country Smoker, Inc. v. Tillamook County Creamery Association*, 333 F. Supp.2d 975, 984 (D. Or. 2004). The deemed admissions will stand because to allow the Claimant to withdraw or amend them would prejudice the Defendants. The Claimant may not claim coverage under the LHWCA or the OSCLA because the admissions establish that the Decedent was not a maritime worker and his death did not occur on an outer continental shelf. Therefore, it is proper to grant summary decision based on the Claimant's admissions.

3. Coverage under the LHWCA

The Longshore Act provides compensation to certain employees engaged in maritime employment for occupational diseases or unintentional work-related injuries, irrespective of fault, occurring on the navigable waterways of the United States or certain adjoining areas, resulting in disability. *See* 33 U.S.C.A. §§ 901, *et seq.* To be eligible for compensation, a person must be an employee (status) as defined by § 902(3) who sustains injury in a place (situs) defined by § 903(a). *P.C. Pfieffer Co., Inc., v. Ford*, 444 U.S. 69, 74 (1979). For a claim to succeed both the situs and status requirements must be satisfied. *Herb's Welding*, 470 U.S. at 415-16; *Brady-Hamilton Stevedore Co., v. Herron*, 568 F.2d 137, 140 (9th Cir. 1978).

a. *Status*

To qualify for benefits under the LHWCA a worker must engage in maritime employment. 33 U.S.C.A. § 903 (West 2007). Maritime employment requires that workers spend "at least some of their time in indisputably longshoring operations." *Northeast Marine Terminal Co. v. Caputo*, 432 U.S. 249 (1977). Any worker who moves cargo between ship and land transportation qualifies as a maritime employee. *P.C. Pfeiffer*, 444 U.S. at 82-84 (covering workers who did tasks "traditionally" performed by longshoremen); *Chesapeake & Ohio R.R. v. Schwalb*, 493 U.S. 40, 45 (1989) (explaining it is "clearly decided that, aside from the specified occupations, land-based activity occurring within the § 903 situs will be deemed maritime only if it is an integral or essential part of loading or unloading a vessel"). Rather than focus on the

particular task at the time of injury, a worker's status turns on the nature of work that he or she may be assigned to do. *P.C. Pfeiffer*, 444 U.S. at 81-82; *see also Schwabenland v. Sanger Boats*, 683 F.2d 309, 312 (9th Cir. 1982) (finding that inspection, testing of new models, and occasional maintenance of recreational small boats is sufficiently related to the construction of the vessels to constitute maritime employment, even though these duties were not a substantial portion of the employee's overall working time).

The Claimant insists that the Decedent was a maritime employee because "a few times" he assisted the platform crane operators by putting supplies into baskets to be loaded onto the crew boat.[11] Deposition of Jose Rosales (Depo. Rosales) at 20-21. This crew boat is used to take personnel to and from platforms to the shore, and also for delivering supplies, pipe, or equipment to and from the platforms. Deposition of Gordon "Scoop" Boswell[12] (Depo. Boswell) at 27. Mr. Boswell did not know whether the Decedent ever put supplies on the crew boat, but he admitted that it was possible. *Id*. at 29.

At La Conchita, he operated a forklift, loaded and unloaded trucks, moved, staged and marshaled worn out equipment, valves, and other scrap metal. Depo. Magill at 30-31. The Claimant argues that the Decedent was performing maritime duties at the time of his death because he was operating a forklift while engaged in the "intermediate steps" of moving scrap metal between the Defendants' ship and scrap metal dealers. *See id*. at 33. At the time he died, however, he was harvesting plantains, not moving scrap metal.

The Defendants assert that whatever material the Decedent might have moved onto or off of a crew boat was incidental to the offshore drilling business, rather than linked to longshore work. His primary duties on the platforms, they say, involved maintenance, painting, cleaning oil spills, fixing leaks and repairing valves. Although they agree that the Decedent spent approximately 5% of his time loading and unloading supplies onto and off of the crew boat, they emphasize that the Casitas Pass Pier is owned by a different company, Venoco Oil Company. Depo. Magill at 13. The Venoco pier operators would crane-lift scrap and equipment from the crew boat, onto a truck.[13] *Id*. at 32.

Chris Magill, one of the Decedent's former supervisors, testified that the crew boat made two trips daily to the platforms, carrying cargo, equipment, tools, and parts, and that Venoco has two crew members that do all the loading and off-loading of equipment. Depo. Magill at 14, 44. He said that when pipe and equipment came from other vendors, the "guys that operate the pier" would do all the unloading, staging, and loading onto the boat. *Id*. at 21. "A few times" the Decedent might have assisted in chocking a load of pipe which was to be loaded onto the crew boat at the pier by the Venoco crew. *Id*. at 20. It was not the Decedent's normal job to assist in

[11] Jose Rosales, a coworker, testified that the Decedent brought materials to the pier once a week, but he did not put them on the crew boat. Depo. Rosales at 17-18. Mr. Rosales's deposition appears as Exh 15 in support of the Declaration of Timothy K. Sprinkles (Dec. Sprinkles) in Opposition to Motion for Summary Decision.

[12] This deposition appears as Exh. 2 in support of Dec. Sprinkles.

[13] This deposition appears as Exh 14 in support of Dec. Sprinkles.

rigging pipe out on the platforms; he did it only once a month. *Id*. at 20-21. There was a rigging crew assisted by the Venoco boat crew that handled most the cargo. *Id*. at 44.

Where loading and unloading of equipment is incidental to an employee's primary role in support of oil and gas production, he does not qualify for coverage under the LHWCA. *See Herb's Welding*, 470 U.S. at 423 (explaining that the Claimant's primary welding work was far removed from traditional LHWCA activities, notwithstanding the fact that he unloaded his own gear upon arriving at the platform by boat); *Munguia v. Director O.W.C.P.*, 999 F.2d 808, 812-13 (5th Cir. 1993) (holding that a roustabout/relief pumper-gauger lacked maritime status under the LHWCA, because he loaded and unloaded tools and supplies for the non-maritime purpose of servicing fixed platforms); *Alexander v. Hudson Engineering Co*, 18 BRBS 78 (1986) (finding no longshore status where onshore loading duties were incidental to the claimant's primary role as an electrician in the fabrication and outfitting of fixed offshore oil production facilities). *But cf., Maher v. Director, O.W.C.P.*, 330 F.3d 162, 167 (3rd Cir. 2003) (establishing status under the LHWCA where the employee worked 50% of his time as a checker directly involved in loading and unloading functions).

It is immaterial whether the Decedent or Venoco's crew members loaded or unloaded scrap metal on and off of the crew boat. Even assuming that the Decedent occasionally performed this task does not amount to substantial evidence that he worked in maritime employment because the Defendants conduct an oil exploration and extraction business. There is no evidence his duties were for any purpose other than to support this non-maritime operation. Whatever loading and unloading the Decedent did was incidental to his primary role as a roustabout on the offshore platforms and the La Conchita site. *See McGray v. Director, O.W.C.P.*, 181 F.3d 1008, 1015 (9th Cir. 1999) ("So in the statutory context, the phrase 'engaged in maritime employment' means that an employer hired the individual to perform maritime work in this particular contract of employment."). Likewise, there is no evidence that the scrap metal that the Decedent marshaled around La Conchita was for the purpose of maritime commerce of any kind, especially because of the nature of the Defendants' oil operation. *See Cappelluti v. Sea-Land Service, Inc*., 10 BRBS 1024 (BRB) (1979) (concluding that the claimant did not engage in maritime employment where he cut up damaged containers that were set aside for salvage and no longer involved in maritime commerce); *Scala v. Island City Iron and Supply, Inc*., 9 BRBS 6000 (BRB) (1979) (finding no maritime employment where employee cut up rusty iron from the dry dock for his employer in the scrap metal business). The Claimant provides no proof to support that the Decedent used a forklift to move scrap metal off of the supply boat; instead, the evidence shows that he used it to move scrap that had already been transported from the pier to the plant. This is not enough to connect him to maritime employment. Therefore, the Claimant cannot satisfy the status requirement based on the Decedent's primary duties, which supported an oil and gas exploration business.

The Claimant nonetheless insists that the Decedent should be covered by the LHWCA because the Defendants qualify as a maritime employer. A maritime employer is one whose employees conduct maritime employment. 33 U.S.C.A. § 902(4) (West 2007). The work must be done "upon the navigable waters of the United States, including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing or building a vessel." *Id.* The Claimant argues that

the Employer is a maritime employer within the meaning of the LHWCA because it has an onshore facility and storage yard located 250-300 feet from the Pacific Ocean, and because workers took a boat twice daily from the Casitas Pass Pier to the offshore platforms. CF 19 - 21.

Viewing the evidence in light most favorable to the Claimant, it does not suggest that the Decedent worked for a maritime employer. An employer's operations on offshore drilling platforms do not call for loading, unloading, repairing or building a vessel; rather, a pipeline serves as the relevant conduit between the platform and the shore. The operations at La Conchita did not involve loading or unloading onto or off of a marine vessel, ship repair or breaking. Dec. Alberts.

Moreover, the Claimant argues, "[b]ut for the Defendant's OCS oil and gas exploration, development, extraction, and transmission business, Defendant would not have owned and operated the La Conchita facility and storage yard." Claimant's Opposition at p. 37. If La Conchita existed because of oil and gas business, then the Supreme Court instructs that it is not maritime. *See Herb's Welding*, 470 U.S. at 422. In *Herb's Welding*, the Court explained that drilling platforms were "not even suggestive of traditional maritime affairs" and that "[t]he history of the Lands Act at the very least forecloses the . . . holding that offshore drilling is a maritime activity and that any task essential thereto is maritime employment for LHWCA purposes." *Id*. By linking La Conchita inextricably to oil and gas exploration, development, extraction, and transmission, the Claimant defeats her own argument that the Decedent performed maritime work for a maritime employer.

Consequently, I find that the Claimant failed to establish that either the Decedent was a maritime employee, or the Defendants maritime employers. Therefore, there is no genuine issue as to any material fact concerning status under the LHWCA.

b. *Situs*

In order to satisfy the situs test, the Decedent's death must have occurred upon the navigable waters of the United States, which is defined under the LHWCA to include any "adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel." 33 U.S.C.A § 903(a). *See McGray*, 181 F.3d at 1010 (expanding situs to include a pier that was not used to dock ships). Employees who are on the situs but not engaged in the overall process of loading or unloading vessels are not covered. *Caputo*, 432 U.S. at 267. Here, the Claimant did not establish that the Decedent engaged in maritime employment. Consequently, the site of his injury has no bearing on the question of coverage.

Even if he were a maritime worker, the Claimant would have to show by substantial evidence that La Conchita qualifies as an adjoining area customarily used to load and unload a vessel. *Caputo*, 432 U.S. 263-64. Coverage under Section 3(a) is determined by the nature of the place of work at the moment of injury. *Griffin v. McLean Contracting Co*., 30 BRBS 221 (ALJ) (1996). To determine whether a site is an "adjoining area," the Ninth Circuit[14] considers

[14] The Claimant argues that the circuit courts are split on how to define an adjoining area under the LHWCA. While the Third and Fifth Circuits analyze this issue slightly differently than the Ninth Circuit, their decisions have no bearing on this case, for binding Ninth Circuit precedent exists.

the following factors: 1) the particular suitability of the site for maritime use; 2) whether adjoining properties are devoted primarily to maritime commerce; 3) the proximity of the site to the waterway; and 4) whether the site is as close to the waterway as is feasible given all the circumstances in the case. *Brady-Hamilton Stevedore Co. v. Herron*, 568 F.2d 137, 141 (9th Cir. 1978).

Here, La Conchita is not particularly suited for maritime use because it is not over or contiguous with any body of water and does not possess any area to unload materials from a dock, barge, floating platform or island, ship or other type of vessel. Dec. Alberts. It does not possess any adjoining pier, or any other area used for loading, unloading, repairing, dismantling, or building of any vessel. *Id*. Therefore, the first factor weighs against finding that La Conchita qualifies as a proper situs under the LHWCA

There are no businesses engaged in shipping operations or other maritime activities within at least a one-mile radius of the La Conchita plant. Dec. Alberts. The Casitas Pass Pier is three miles away, but the Claimant provides no evidence that boats other than the crew boat used to ferry back and forth to the platforms use it. Consequently, this second factor also weighs against the Claimant.

The Claimant argues that the proximity of the plant to the ocean – 250-300 feet – lends itself to maritime employment. Nonetheless, it is undisputed that La Conchita is separated from the Pacific Ocean by railroad tracks, a highway and a beach. DF 32. The plant processes oil delivered from the ground under the platforms via pipeline, not boat. Therefore, the proximity to the ocean is conducive to oil exploration and extraction, but not loading or unloading vessels, ship building or breaking because there is no way to cross from the plant to the ocean without dodging trains and highway traffic. Therefore, factors three and four tip in favor of the Defendants and I find that the Claimant cannot show by substantial evidence that La Conchita is an adjoining area under the LHWCA.

c. *Missing Time Sheets*

Although neither party disputes the location of the Decedent's death, the Claimant protests that it is uncertain whether the Decedent was scheduled to work at La Conchita during the week before his demise. The Claimant explains that she received the Decedent's time cards from April 1, 2004 through May 31, 2004, and his daily journal of work activities from May 5, 2004 through June 5, 2004. Declaration of Timothy K. Sprinkles in Support of Supplemental Opposition to Motion for Summary Decision (Dec. Sprinkles). She says they do not show that he was at La Conchita from May 22, 2004 through May 31, 2004. The Claimant also questions where the Decedent worked on June 1 and 2, 2004, because, she alleges, the Defendants had not produced time sheets for that period. The Claimant believes the Defendants have these missing timesheets and personnel records that "have a substantial likelihood" of showing the precise locations where the Decedent worked, his specific job duties, and the names of supervisors, which would be material to the status and situs issues. She underscores this belief with testimony from Mr. Boswell, who said he did not know if the Decedent left La Conchita on the date of his death, and from Mr. Magill, who testified that the Decedent may have returned to the platforms to get some equipment. *See* Depo. Boswell at 39; Depo. Magill at 52.

The time sheets record two-week periods; the last covers May 16, 2004 through May 31, 2004. Dec. Sprinkles, Exh 1. Under the heading "work performed," it says "work on La Conchita plant painting." In the time slot underneath May 31, it reads "Hogan Day." The hours worked per day are listed under each date. There is an "X" underneath the days corresponding to May 16, and 22-30, rather than hours, suggesting that the Decedent did not work during those days.[15]

The Defendants explain that they produced the requested timesheets. They say there were no time sheets for June 1 and 2, 2004 because the Decedent maintained his own time sheets, kept them in his possession, and would submit them to his employer every two weeks. *See* Depo. Magill at 42; Depo. Rosales at 27. Thus, he would not have submitted his time for June 1 and 2 until June 15, 2004, but he died before he could do so. Based on the deposition testimony that supports these facts, there is no reason to believe there were timesheets for June 1 and 2, 2004 for the Defendants to withhold.

Moreover, I find that the absence of timesheets for June 1 and 2, 2004 does not create a dispute of material fact because the parties agree on the place of death. Although it appears that the Decedent worked on platform Hogan on May 31, 2004, and it is possible that he could have returned to the platform on the day of his death, the place of injury (or death) controls the question of situs under the LHWCA. *See Griffin*, 30 BRBS 221. It does not matter if before his death he went out to the pier, the crew boat, or any other place that might have qualified under the Longshore Act. It is undisputed that he died 10 feet off of one of La Conchita's service roads, which do not qualify as adjoining areas. Therefore, the absence of time sheets covering the last two days of the Decedent's life do not evoke the possibility that the place of his death could have been somewhere the statute covers.

4. Coverage under the OCSLA

The OSCLA extends the benefits of the Longshore Act to employees injured or killed as the result of operations conducted on the outer continental shelf for the purpose of exploring for, developing, removing or transporting by pipeline the natural resources, or involving rights to the natural resources, of the subsoil and seabed of the outer continental shelf. 43 U.S.C.A. § 1333(b), (c) (West 2007). It provides "an essentially non-maritime remedy" and controls only on "the subsoil and seabed of the outer continental shelf, and artificial islands and fixed structures" upon it. 43 U.S.C.A. § 1333(a)(2)(A) (West 2007); *Offshore Logistics v. Tallentire*, 477 U.S. 207, 217 (1986). The coverage provisions of OCSLA are separate from and are not related to the coverage requirements of the LHWCA. *Robarge v. Kaiser Steel Corporation*, 17 BRBS 213 (1985), *aff'd sub nom., Kaiser Steel Corp. v. Director, OWCP*, 812 F.2d 518 (9th Cir. 1987).

[15] This corresponds to the total hours submitted for the two-week period: 72. There are 12 hours listed under May 17, 18, 19, 20, 21, and 31. (6*12=72).

a. *Status*

The OSCLA confers status broadly, excluding only those employees who are "a master or member of a crew of any vessel, or an officer or employee of the United States or any agency thereof or of any State or foreign government, or of any political subdivision thereof." 43 U.S.C.A. § 1333(b)(1) (West 2007). This section extends the Longshore Act to all victims of disabling or fatal injuries sustained while working to develop the mineral wealth of the outer continental shelf. *Kaiser Steel Corp*, 812 F.2d at 522 (covering a welder injured during construction of an offshore oil platform located on the outer continental shelf). There is no dispute that the Decedent has status under this statute because of his duties on platform Hogan.

b. *Situs*

The parties dispute whether the OCSLA contains a situs requirement. In *Herb's Welding*, the Supreme Court recognized that the BRB had found that a claimant, who was injured while welding a gas flow line on a fixed platform located in Louisiana waters, could recover under the OCSLA despite the location of his injury away from the outer continental shelf because the injury occurred as the claimant performed work "integrally related" to operations on the outer continental shelf. 470 U.S. 418 & n. 12. Nonetheless, the Court declined to review the question of a situs requirement under the OCSLA because it had not been fully briefed and was not discussed by the appellate forum. *Id*.

One year later, the Supreme Court decided *Offshore Logistics v. Tallentire*, 477 U.S. 207, 219 (1986). The Court held that two offshore platform workers who died when a helicopter carrying them from the platform crashed 30 miles off of the Louisiana coast were not covered by the OCSLA because the accident did not arise on the subsoil and seabed of the outer continental shelf, or the artificial islands and structures erected thereon. *Id*. at 217. The crash occurred on the high seas, so the Death on the High Seas Act (46 U.S.C.A. §§ 761, 767) applied. The Court did not extend coverage to the platform workers because they were killed miles away from the platform, explaining that, "Congress determined that the general scope of OCSLA's coverage . . . would be determined principally by locale, not by the status of the individual injured or killed." *Id.* at 218.

Dicta in the Ninth Circuit's decision in *A-Z International v. Phillips*, 179 F.3d 1187 (9th Cir. 1999), an appeal that involved whether the claimant had filed a fraudulent claim for benefits, refers to a situs requirement.[16] Although the court did not review the ALJ's denial of benefits on grounds that the claimant was not injured on the offshore platform, it cited to *Offshore Logistics* and mentioned that "[t]he situs requirement is a predicate for coverage under the OCSLA." *Id.* at 1189 & n.1.

[16] In an earlier case, *Kaiser v. Director, O.W.C.P.*, 812 F.2d 518 (9th Cir. 1987), the court upheld benefits for an employee injured while on the outer continental shelf but during the construction of an offshore oil platform, before any oil or gas had been extracted from the earth. Although there was no question of extending coverage to workers injured off of the outer continental shelf, the court concluded that "section 1333(b) should be construed as extending coverage to all victims of disabling or fatal injuries sustained while working to develop the mineral wealth of the outer continental shelf." *Id*. at 522. This case avoids the issue of situs, however, and this broad statement was rejected in later case *A-Z International* when the court recognized a situs requirement.

The Claimant argues that *Offshore Logistics* is not binding precedent because it concerned a helicopter crash over the high seas and does not state definitively whether the OSCLA covers only those who are hurt on the outer continental shelf. Likewise, she challenges the authority of *A-Z International* because no issue of situs was raised during that appeal. Instead, she focuses on the vast majority of time the Decedent spent working on the platforms (98% of his work time), instead of on the place of his death, and urges application of either Third or Fifth Circuit precedent.

The Third Circuit does not recognize a situs requirement, therefore an injury on land can result in coverage under the OSCLA. *See Curtis v. Schlumberger Offshore Service, Inc.*, 849 F.2d 805, 809 (3rd Cir. 1988) (interpreting the statute to contain no geographic restrictions and covering any injury occurring as the result of oil-drilling operations). By this standard, the Claimant would likely be entitled to benefits, despite his death on shore, because it is undisputed that the work he performed at La Conchita supported the offshore drilling business. The problem is that the *Curtis* case appears to be the outlier result of recent cases that analyze coverage under the OCSLA, including an administrative proceeding within the Ninth Circuit. *See Morrison v. Pool California Energy Services, et. al.*, 36 BRBS 223 (ALJ) (2002) (rejecting the Third Circuit's decision in *Curtis* and opining that the employer was "probably correct in contending that there is a 'situs' requirement in the OCSLA").

The Claimant's reliance on Fifth Circuit authority is misplaced. Although she contends that the Fifth Circuit has left the issue of situs "open to interpretation," *Mills v. Director, O.W.C.P.*, 877 F.2d 356, 359 (5th Cir. 1989), this is not correct. In *Mills*, the court took the opportunity to fill the gap in the statutory language and legislative history by interpreting Section 1333(b) to require that coverage extend to employees who "suffer injury or death on an OCS platform or the waters above the OCS." *Id*. at 359. It declined to extend benefits to workers injured off of the outer continental shelf, explaining, "[g]iven that Congress intended to establish a bright-line geographical boundary for § 1333(b) coverage, we now draw that line." *Id*. at 362.

She also cites to *Stansbury v. Sikorski Aircraft*, 681 F.2d 948, 950-51 (5th Cir. 1982), as authority that the OCSLA applies to injuries occurring without regard for situs. However, the circuit court explained in the *Mills* decision that it did not interpret *Stansbury* to read Section 1333(b) as extending longshore benefits to oilfield workers injured on land or state territorial waters. *Mills*, 877 F.2d at 361-62. The holding in *Mills* was reinforced in *Demette v. Falcon Drilling Co.*, 280 F.3d 492, 498 (5th Cir. 2002), which concludes that the Supreme Court and Fifth Circuit have held that Section 1333(a)(1) creates a situs requirement, and in *Diamond Offshore Co. v. A&B Builders*, 302 F.3d 531, 541-42 (5th Cir. 2002), in which the court enumerated three locations that satisfy the situs requirement of Section 1333(a)(1):

> 1) the subsoil and seabed of the OCS;
> 2) any artificial island, installation or other device if (a) it is permanently or temporarily attached to the seabed of the OCS, and (b) it has been erected on the seabed of the OCS, and (c) its presence on the OCS is to explore for develop, or produce resources from the OCS;

3) any artificial island, installation, or other device if (a) it is permanently or temporarily attached to the seabed of the OCS, and (b) it is not a ship or vessel, and (c) its presence on the OCS is to transport resources from the OCS.

On balance I find that the Fifth Circuit cases follow the Supreme Court's interpretation of the OCSLA as including a narrow situs requirement. Although the Ninth Circuit may not have analyzed the issue of situs directly, mention of situs as "predicate for coverage" gives a strong indication that it would align with the Fifth Circuit, rather than the Third Circuit, when the issue arises. Therefore, I find that Fifth Circuit precedent, as it adopts the narrow Supreme Court interpretation of situs in *Offshore Logistics*, is the most persuasive. In order to be covered by the OCSLA, an employee must have suffered an injury on the subsoil and seabed of the outer continental shelf, or the artificial islands and structures erected thereon the waters above it.

The parties agree that the Decedent was killed while harvesting plantains at an onshore facility that served offshore oil platforms. This location does not satisfy the situs requirement of the OCSLA. Therefore, the Claimant is not entitled to benefits under this statute.

V. Conclusion

The Claimant's motion to withdraw or amend is denied because it would prejudice the Defendants' ability to defend against this claim. The Defendants' motion to strike is also denied to give the Claimant the opportunity to counter all of the defense arguments opposing the motion to withdraw or amend. The Claimant has failed to submit any evidence raising a triable issue of fact that her claim falls under the jurisdiction of either the LHWCA or the OCSLA. Therefore, I grant summary decision in the Defendants' favor, and dismiss this claim.

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William Dorsey
Administrative Law Judge